

August 2009

“I have noticed even people who claim everything is predestined, and that we can do nothing to change it, look before they cross the road”. Stephen William Hawking.

By now most of you have heard about the new acronyms HERA, HVCC, TIL, and HOEPA. You may be wondering what this mean to you as a home owner and as a buyer. I can tell you, a lot!

HOEPA = Home Ownership and Equity Act
HERA = Housing and Economic Recovery Act
HVCC = Home Valuation Code of Conduct
TIL = Truth in Lending (new revisions)
Nevada rulings on Foreclosures and Mediation

HVCC changes how appraisals are to be done and in effect gives appraisers significant power to shape values. This is important. If you want to know what a home is WORTH, call an appraiser. If you want to know what a home WILL SELL FOR, call a Realtor.

These rules were put into place to stop any further or future lender/appraiser abuses and fraud from years past. Over time, it is hoped that the appraisers' role will be lessened but as of today sales are being greatly affected by this rule. I do not want to rehash past abuses so let's talk about how this new rule works and affects a sale.

Any loan today requiring an appraisal will go through the new system. The lender will order the appraisal through a “clearing” house from a pool of appraisers. The appraiser may or may not be familiar with the area the home being appraised is in; the appraiser may or may not have recent experience in that particular area also. The appraiser will get the order and will NOT speak to the lender; the lender is not allowed to speak with the appraiser. The appraiser will know virtually nothing about the purpose or intent of the appraisal to be done. The appraiser must use the most current sales, will not differentiate between distressed sales and non-distressed sales and will not skip over current good comparables to reach into the past for better comparables when newer ones are available.



The appraiser is now playing a much more enhanced role of “judge” on the value of a home. In a declining market, or a market trying to stabilize let alone grow, this new rule is going to be very painful to Northern Nevada and especially to agents such as myself that handle higher valued homes (read homes within any given market range that are the nicest and best kept) and the new system supports discounted or distressed homes. It is far easier to come up with lower values in this type of market than with higher values, so in effect, the new rules mean that as much as this market wants to change, the appraisal rules and lending rules are virtually stopping values from being able to rise at all.

After the appraiser has completed the appraisal in many cases, the appraisal will go through a new process called “appraisal review” and then on to underwriting review, if the appraisal survives the reviews then the loan will move forward to an eventual closing, which is where HERA comes in. If an appraisal does not come in, at or above purchase price, it can be challenged if it is not a VA/FHA offer, but in reality this has proven to be near impossible.

HERA is where the new Truth in Lending (TIL) rules will affect most closing. For the past 15 years most loans in Northern Nevada could be processed and closed with reasonable comfort, in less than 35 days. Now we are advised that loans may need 40-50 days to close and maybe longer. Currently we are struggling to close loans in 35 days or less due to new lender requirements, so it is pretty easy to assume that the average sale will take another two weeks to close.

In addition, it has always been an issue that sellers have taken undue risk to vacate prior to loan funding but now that risk is off of the charts. Due to the inability to get a clear loan approval from lenders in a reasonable time, delayed escrows and seller rent backs are going to become normal and not the exception. This will make three and four legged transactions really interesting and I can see some real challenges moving people on non-flexible schedules. Can you just imagine with our new rules, a buyer is buying, the sellers also buying, and that last seller in line having to move so everyone else can move but no one knowing when the actual close is and when to line up the movers? I can assure you that the seller who is waiting for the first buyer to be approved and the second buyer to be approved is not going to box up anything until they know that they have a solid sale (and cash in hand)!

HERA has four major new provisions that must now be met and can cause serious time delays if the time lines are not followed. In a 30 day month with the new system, there are only five days that are not accounted for and can be used to absorb any delays. Buyers must lock in their loans as fast as possible, buyers must have three days prior to closing to read and review the appraisal, any changes made by the buyer on a loan decision with a rate change of greater than .125% after the first TIL disclosure require that new disclosures be made and that will add an additional seven days on to the loan process. Any delays on dates, times, paperwork, holidays, vacations are going to have added impact on the process, hence the possibility of a 45 day escrow becoming a fast escrow and 60 days may not be unheard of. Buyers need to understand that they cannot change loan programs or lenders in the middle of the escrow to get a better deal or the whole escrow will go back to square one.

The Nevada Judiciary directive on Mediation for foreclosure for owner occupied homes. For more information on this very new subject please go to <http://www.nevadajudiciary.us/> and read the section on Foreclosure Mediation. This is new untested ground so this will be a new area with lots to learn. I am not going to try to explain this law in depth but it sounds promising for those facing foreclosure that qualify under the terms of the law. In short, a home owner will apply for the program, send in \$200, the lender will respond with \$200 and send a qualified person to the mediation to creatively come up with a solution. All parties must negotiate in good faith and if the lender fails to do so then the mediator can advise the courts of that fact and the foreclosure can be denied. This does not mean that a foreclosure can be stopped; it just means that qualified parties must "talk." Maybe there is nothing that can be done; maybe there is, maybe the best that happens is the home owner gets a few extra months in the home. This is a very open law so there are lots of possibilities and solutions.

In May I stated that if the market continued to perform as I saw it by midsummer we would start to run out of inventory in select parts of our market. Well we are definitely on track with that forecast. Just ask any buyer today that is trying to buy a decent home, for under \$200,000, how many homes are in escrow! Times are changing but it is going to be a long ride. We are repairing our market one sale at a time, sooner than we all realize we are going to look back and see how much we did to get ourselves out of this hole.

Kind regards,

A handwritten signature in black ink, appearing to read "David Morris". The signature is written in a cursive, flowing style.

David Morris